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Via E-Mail

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re **Opposition to BZA Application No. 18702; 2303 14th Street, NW**

Dear Chairman Jordan and Members of the Board,

I am writing on behalf of a group of residents and neighbors of the view 14 apartment complex at 2303 14th Street N W (hereinafter, "Concerned Residents"). The Concerned Residents consists of residents of three apartment units on the floor directly above the commercial space (the "Premises") which is the subject of Application No. 18702 (the "Application"). One member of this group resides in a unit directly above the Premises, and happens to be one of the three people that previously – mistakenly -- signed the apparent petition in support of the Application

Despite their concerns about openly opposing an application by their landlord, these three residents are opposed to the prospect of an animal shelter, pet grooming, and animal boarding uses located below them and the likely resulting negative impacts Other members of the group have more general concerns about the proposed use

The Concerned Residents assert that the Applicant has not satisfied the requirements of either the special exception or the variance tests Regarding the special exception request, the Applicant has not proven that noise and odor emanating from the Premises will not substantially negatively impact the Building's tenants Regarding the variance request, there is no practical difficulty to the owner as a result of any extraordinary or unique situation or condition with the Premises, the View 14 building ("Building"), or the Property (the "Property"), and granting relief will be a substantial detriment to the public good and to the integrity of the Zone Plan.

A Variance Relief

1) The Proposed Use Abuts Five (5) Residential Uses Section 736 4 provides that "the pet grooming establishment shall not abut an existing residential use " Section 739 5 provides that "the animal shelter use shall not abut an existing residential use " By the Applicant's own admission, the Premises abuts five (5) residential apartment located directly above it In the Application, the Applicant identifies the five (5) abutting apartments as units 221, 223, 224, 225, and 226

Despite that admission, the Applicant still suggests that a residential use that sits directly on top of the proposed animal boarding, pet grooming, and animal shelter uses does not actually "abut" those uses directly below them. It is not difficult to respond to such an incredible claim. Even the definition of "abut" provided by the Applicant in its Footnote #3 describes the word in terms that make it clear that the Premises abuts the residences above it, including phrases such as: "to touch (as of contiguous estates). ., terminate at a point of contact (as with an adjacent structure); [and this one in particular.] ***lean or rest for support (as upon another structure)***,"

The Applicant cites BZA Order No 18474 of Wagtime, LLC, for 1232 9th Street, N.W., to suggest that the proposed use does not actually 'abut' the residential uses sitting directly above the Premises. But the Wagtime situation bears no resemblance to this Application In the Wagtime case, the subject building was three floors. The third floor contained the remnants of a "formerly leased but.. currently vacant" residential use (a kitchen and a bathroom) (FOF #4) In finding that the proposed Wagtime use did not abut an *existing* residential use, the Board relied on its findings that the third floor space was no longer occupied, was leased by the Applicant, and would not be used as a residence in the future Rather, it was noted that the space would be used only by Wagtime employees "as a place to take showers and eat lunch."

Furthermore, the third floor residential unit was part of Wagtime's leased property, accessible only through the inside of dog daycare and grooming business According to the Office of Planning report from the Wagtime case "[t]he subject property does not abut an existing residential use or residence district. The third floor apartment is vacant and therefore not an existing residential use." The OP Report further notes that "the third floor residential unit would remain vacant." In order for the precedent in the Wagtime case to be applicable to the View 14 application, the second floor abutting units in the View 14 building would have to be currently vacant, committed to remain vacant, accessible through the Premises only, and leased and used only by the operator of the animal boarding use This Application has none of these characteristics.

2) Nothing About the Property is Unique or Extraordinary. The Applicant has failed to identify a single exceptional aspect of size, shape, or topography, or a single exceptional condition or situation The Applicant has instead listed a handful of commonplace conditions and labeled them a "confluence of factors," possibly hoping to obscure the fact that the Property is a standard mixed-use apartment building in an area known for mixed-used apartment buildings. The three or four conditions listed by the Applicant are neither unique nor do they result in a practical difficulty or undue hardship to the Property owner.

The list includes·

(i) View 14 is a mixed-use building with ground floor retail and apartment community above. This describes the vast majority of mixed-use apartment houses in any vibrant urban area like 14th Street and Florida Avenue. The parent company owner of the property, UDR, owns or manages a very similar building directly across the street, which also does not have a dog boarding and grooming business.

(ii) The Property is in the C-2-B District on a major commercial corridor. All the surrounding C-2-B properties are in this same commercial corridor. And numerous other properties throughout the District are on major commercial corridors in the C-2-B District. There is nothing the slightest bit unique about that situation

(iii) The only abutting residential use to the proposed dog day care center consists of the apartments on the second floor of the building on the same property but on a different horizontal plane from the proposed pet grooming and animal shelter uses This is merely another way of saying that this is a mixed-use apartment building Obviously, in a mixed-use apartment building, there will be residential units on top of commercial space on a different horizontal plane from the commercial use below This is not a unique condition. It is, however, a reason why granting relief would cause a substantial detriment to the public good

(iv) The Property owner owns the Building. This is not only another common occurrence - it is not even a condition involving *the Property*, as required. While the Applicant owns the apartment units above the Premises, the units are leased to private individuals as residential units and are not vacant. This is not extraordinary; nor does it cause any practical difficulty for the Property owner in complying with the Zoning Regulations in the Premises below

Combining a short list of completely common conditions does not make a Property unique. To find so would gut the integrity of the Zoning Regulations and the first prong of the variance test It would also effectively amend the Zoning Regulations to allow pet grooming and animal shelters in mixed-use apartment buildings, despite the explicit prohibition against them provided by the Zoning Commission.

3) No Practical Difficulty Exists; Nor Could It Result From Any Unique Situation

The Applicant has failed to show an undue hardship or a practical difficulty would be encountered by strictly applying the Zoning Regulations There are numerous other permitted uses in the C-2-B district The Premises is not currently configured as a dog daycare or similar use In fact, the Applicant has submitted a comprehensive plan of building materials that will be used as part of the project to convert the existing shell into the proposed uses. There are many similar buildings in the District, none of which have found it difficult to comply with the Zoning Regulations absent an animal shelter. The only difficulty claimed by the Applicant is that the current desired use for the Premises is prohibited by the Zoning Regulations. If that were a legitimate practical difficulty or undue hardship, then every failure to meet the Zoning Regulations must be a practical difficulty or undue hardship deserving of variance relief.[1]

4. Substantial Detriment to the Public Good.

Currently, there are no dog boarding and grooming businesses in the District that abut five (5) residential units It is not enough to simply state that the Building owner, since it owns the entire Building, has an interest in ensuring that the animal-related use does not negatively impact the residential uses in the Building The Applicant must show that the unprecedented act of putting a dog daycare and grooming

[1] The requested relief is a use variance, since the relief is from a prohibition of this use when it abuts a residential use All aspects of the relief relate to typical factors considered in use variances But the distinction between use and area variances here is irrelevant Regardless of which test is applied, the Property has no unique or extraordinary situations or conditions that result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the Property owner

business directly below five (5) residential units will not harm those units or the other 180 units in the Building. Residents of View 14 who are part of the Concerned Residents group will testify to the thin walls, floors, and ceilings in the Building, which allow noise to travel from unit to unit and throughout the Building The significant amount of noise from barking dogs will not only be heard by the residents, but it will cause additional barking by residential tenants' dogs in their units, multiplying the adverse impact of these proposed uses

5) Substantial Detriment to the Integrity of the Zone Plan

The restrictions of Sections 736 4 and 739.5 were adopted by The Zoning Commission after careful study and consideration The Zoning Commission intended to prohibit these uses when they abut a residential use, according to the plain language of those regulations There is no distinction for non-horizontal planes or mixed-use apartment buildings or for when the use is favored by some or even all of the tenants of a building. Granting variance relief in this case would effectively sidestep that explicit prohibition by the Zoning Commission, at least as they apply to apartment houses, but also to other situations as well.

The Applicant has also proposed to substantially change the meaning of the Zoning Regulations, by redefining the word "abut" to mean something other than the plain language of its definition Such a ruling would also substantially impair the intent, purpose, and integrity of the zone plans embodied in the Zoning Regulations and Map

B. Special Exception Relief.

Animal Boarding, Grooming, and Shelter use is permitted as a special exception if approved by the Board under Section 3104 1, subject to the requirements of Sections 735, 736, and 739 The Applicant has not shown that it meets these requirements, and in fact it cannot meet such requirements in a facility that is entirely within a residential use and directly underneath five (5) residential units

1. Noise.

The Applicant has submitted a sound transmission analysis. The report suggests a single dog barking baseline to be used at 78 dBA. This number is based on an average noise level, not on the maximum likely noise level The Applicant's report then deduces that 50 dogs barking would be only approximately 95 dBA. In a recent denial of special exception relief for animal boarding use at 1310 Pennsylvania Avenue, SE (Application No 18584), the Board found a lower average decibel number (under 75 dBA) to be too high because it "is going to exceed that as allowed by D C. Government " [65 dBA] (Transcript of BZA Meeting, September 10, 2013, page 42) The Board termed this level of noise "exceedingly high" and based its denial on that analysis, despite the fact that that the dogs were to be kept inside a cement block portion of the structure that did not even abut another structure

In contrast, this Applicant proposes 5 indoor dog parks, a grooming area, and an eat/sleep space within a 185-unit apartment house and directly underneath five (5) residential living units Resident members of this group have described the walls and floors of the Building as "very, very thin." The residents are also aware of various complaints between neighbors to the management that they could hear noise from other

residential units and from construction in the retail spaces below In this context, the Applicant is proposing a 24-hour boarding use, which has the potential for disturbances at all hours of the day and night. But the Applicant has failed to address how it can possibly ensure that no barking occurs at night when the residents of View 14 are attempting to sleep, or during the day when resident may be working or studying, when much lower levels of noise are already heard by many tenants

The Applicant states that minimum penetrations in the drywall ceiling by lights and electrical conduits will be created, except for near isolations hangers supporting air handling units, HVAC ducts, and plumbing and piping. The Applicant states that the air filtration will be designed for maximum air turnover, which seems to imply large ducting systems. In a 4500 square foot facility with 5 separate dog parks, grooming, and eat/sleep room, there are likely to be many penetrations for HVAC and filtering systems, and other systems The Applicant has failed to address how noise will be prevented from escaping the multiple penetrations of the ceiling in each of the 7 dog areas mentioned

2. Odor Concerns

The Applicant fails to have a comprehensive odor abatement plan. Unlike the extensive sound transmission analysis, the Applicant has done little more than restate the requirements for the special exception for odor concerns. There are no HVAC diagrams submitted, nor equipment models and specifications listed. The Applicant failed to offer a particular HEPA filtration system that would be sufficient for their needs It is not clear if there will be any fresh air intake in the facility. The Applicant states that there will be no outdoor areas for the dogs Thus, dozens of dogs will be defecating in the 5 indoor dog parks each day, potentially multiple times per dog As can be witnessed in any residential apartment building also housing a restaurant, restaurant exhaust and return air systems are not air tight, and the aroma of food often escapes the restaurant into the residential areas In a large animal boarding facility, the aroma of animal feces is sure to escape the Premises, especially since there is no outdoor area for dogs to relieve themselves. The applicant has failed to address this requirement The Applicant has stated that animal waste will be taken from the Premises several times per day and located in a different storage area, where the waste will be removed weekly The Applicant has failed to address how the odors will be contained during the waste removal and storage

C. Conclusion

When the Zoning Commission adopted the Zoning Regulations for animal boarding use, pet grooming, and animal shelters, it clearly expressed its intent that these uses were generally not compatible with residential uses and zones The Zoning Commission understood that even the best mitigation could not fully protect residents from the harmful effects of these uses So it adopted regulations that completely prohibited pet grooming and animal shelter uses in certain situations, namely, when these uses are in close proximity to residential uses. In this Application, the residential uses could not be any closer to the proposed animal-related uses, and to grant the requested relief here would signal a rejection of the Zoning Commission's framework for the consideration and approval of animal-related uses

In addition, the Property is simply not subject to any unique conditions or situations that might make complying with the Zoning Regulations a practical difficulty to the owner There is simply no legal basis for

the satisfaction of the variance test. The Applicant has failed to meet the requirements set out in the requested special exception relief, and has failed to satisfy the variance test The Concerned Residents therefore respectfully request that the Board deny the Application.

Sincerely,

Martin P. Sullivan